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Report of Working Group I (MSMEs) on the work of its thirty-first session (Vienna, 8–12 October 2018)

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I. Introduction

1. At its forty-sixth session, in 2013, the Commission requested that a working group should commence work aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises (MSMEs) throughout their life cycle.[1] At that same session, the Commission agreed that consideration of the issues pertaining to the creation of an enabling legal environment for MSMEs should begin with a focus on the legal questions surrounding the simplification of incorporation.[2]

2. At its twenty-second session (New York, 10 to 14 February 2014), Working Group I (MSMEs) commenced its work according to the mandate received from the Commission. The Working Group engaged in preliminary discussion in respect of a number of broad issues relating to the development of a legal text on simplified incorporation[3] as well as on what form that text might take,[4] and business registration was said to be of particular relevance in the future deliberations of the Working Group.[5]

3. At its forty-seventh session, in 2014, the Commission reaffirmed the mandate of Working Group I, as set out above in paragraph 1.[6]

4. At its twenty-third session (Vienna, 17 to 21 November 2014), Working Group I continued its work in accordance with the mandate received from the Commission. Following a discussion of the issues raised in working paper A/CN.9/WG.I/WP.85 in respect of best practices in business registration, the Working Group requested the Secretariat to prepare further materials based on parts IV and V of that working paper for discussion at a future session. In its discussion of the legal questions surrounding the simplification of incorporation, the Working Group considered the issues outlined in the framework set out in working paper A/CN.9/WG.I/WP.86, and agreed that it would resume its deliberations at its twenty-fourth session beginning with paragraph 34 of that document.

5. At its twenty-fourth session (New York, 13 to 17 April 2015), the Working Group continued its discussion of the legal questions surrounding the simplification of incorporation. After initial consideration of the issues as set out in working paper A/CN.9/WG.I/WP.86, the Working Group decided that it should continue its work by considering the first six articles of the draft model law and commentary thereon contained in working paper A/CN.9/WG.I/WP.89, without prejudice to the final form of the legislative text, which had not yet been decided. Further to a proposal from several delegations, the Working Group agreed to continue its discussion of the issues included in A/CN.9/WG.I/WP.89, bearing in mind the general principles outlined in the proposal, including the "think small first" approach, and to prioritize those aspects of the draft text in A/CN.9/WG.I/WP.89 that were the most relevant for simplified business entities. The Working Group also agreed that it would discuss the alternative models introduced in A/CN.9/WG.I/WP.87 at a later stage.

6. At its forty-eighth session, in 2015, the Commission noted the progress made by the Working Group in the analysis of the legal issues surrounding the simplification of incorporation and to good practices in business registration, both of which aimed at reducing the legal obstacles encountered by MSMEs throughout their life cycle. After discussion, the Commission reaffirmed the mandate of the Working Group under the terms of reference established by the Commission at its

[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

[2] For a history of the evolution of this topic on the UNCITRAL agenda, see A/CN.9/WG.I/WP.97, paras. 5 to 20.

[3] See Report of Working Group I (MSMEs) on the work of its twenty-second session A/CN.9/800, paras. 22 to 31, 39 to 46 and 51 to 64.

[4] Ibid., paras. 32 to 38.

[5] Ibid., paras. 47 to 50.

[6] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134.

forty-sixth session in 2013 and confirmed at its forty-seventh session in 2014.[7] In its discussion in respect of the future legislative activity, the Commission also agreed that document A/CN.9/WG.I/WP.83 should be included among the documents under consideration by Working Group I for the simplification of incorporation.[8]

7. At its twenty-fifth session (Vienna, 19 to 23 October 2015), the Working Group continued its preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, exploring the legal issues surrounding the simplification of incorporation and on good practices in business registration. In terms of the latter, following a presentation by the Secretariat of documents A/CN.9/WG.I/WP.93, Add.1 and Add.2 on key principles of business registration and subsequent consideration by the Working Group of A/CN.9/WG.I/WP.93, it was decided that a document along the lines of a concise legislative guide on key principles in business registration should be prepared, without prejudice to the final form that the materials might take. To that end, the Secretariat was requested to prepare a set of draft recommendations to be considered by the Working Group when it resumed its consideration of working papers A/CN.9/WG.I/WP.93, Add.1 and Add.2 at its next session.[9] In respect of the legal issues surrounding the simplification of incorporation, the Working Group resumed its consideration of the draft model law on a simplified business entity as contained in working paper A/CN.9/WG.I/WP.89, starting with Chapter VI on organization of the simplified business entity, and continuing on with Chapter VIII on dissolution and winding-up, Chapter VII on restructuring, and draft article 35 on financial statements (contained in Chapter IX on miscellaneous matters).[10] The Working Group agreed to continue discussion of the draft text in working paper A/CN.9/WG.I/WP.89 at its twenty-sixth session, commencing with Chapter III on shares and capital, and continuing with Chapter V on shareholders' meetings.

8. At its twenty-sixth session (New York, 4 to 8 April 2016), Working Group I continued its consideration of the legal issues surrounding the simplification of incorporation and on key principles in business registration. In respect of the former, the Working Group resumed its deliberations on the basis of working paper A/CN.9/WG.I/WP.89. Following its discussion of the issues in Chapters III and V,[11] the Working Group decided that the text being prepared on a simplified business entity should be in the form of a legislative guide, and requested the Secretariat to prepare for discussion at a future session a draft legislative guide that reflected its policy discussions to date (see A/CN.9/WG.I/WP.99 and Add.1).[12] In respect of key principles in business registration, the Working Group considered recommendations 1 to 10 of the draft commentary (A/CN.9/WG.I/WP.93, Add.1 and Add.2) and the recommendations document (A/CN.9/WG.I/WP.96 and Add.1) for a legislative guide, and requested the Secretariat to combine those two sets of documents into a single draft legislative guide for discussion at a future session.[13] In addition, the Working Group also considered the general architecture of its work on MSMEs, and agreed that its MSME work should be accompanied by an introductory document along the lines of A/CN.9/WG.I/WP.92, which would form a part of the final text and would provide an overarching framework for current and future work on MSMEs.[14] The Working Group also decided[15] that it would devote its twenty-seventh session to deliberations on a draft legislative guide on a simplified business entity, and its

[7] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 220 and 225; *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 134; and *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

[8] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 340.

[9] See Report of Working Group I (MSMEs) on the work of its twenty-fifth session, A/CN.9/860, para. 73.

[10] Ibid., paras. 76 to 96.

[11] See Report of Working Group I (MSMEs) on the work of its twenty-sixth session, A/CN.9/866, paras. 23 to 47.

[12] Ibid., paras. 48 to 50.

[13] Ibid., paras. 56 to 85 and 51.

[14] Ibid., paras. 86 to 87.

[15] See Report of Working Group I (MSMEs) on the work of its twenty-sixth session, A/CN.9/866, para. 90.

twenty-eighth session (New York, 1 to 9 May 2017) to consideration of a draft legislative guide reflecting key principles and good practices in business registration.

9. At its forty-ninth session (New York, 27 June to 15 July 2016), the Commission commended the Working Group for its progress in the preparation of legal standards in respect of the legal issues surrounding the simplification of incorporation and to key principles in business registration, both of which aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle. The Commission also noted the decision of the Working Group to prepare a legislative guide on each of those topics and States were encouraged to ensure that their delegations included experts on business registration so as to facilitate its work.[16]

10. At its twenty-seventh session (Vienna, 3 to 7 October 2016), the Working Group continued its deliberations focusing on the draft legislative guide on a simplified business entity. As decided at its twenty-sixth session,[17] the Working Group left consideration of the draft legislative guide on key principles of a business registry for the first week of its twenty-eighth session (New York, 1 to 9 May 2017). At its twenty-seventh session, the Working Group considered the issues outlined in working papers A/CN.9/WG.I/WP.99 and Add.1 on an UNCITRAL limited liability organization (UNLLO), beginning with section A on general provisions (draft recommendations 1 to 6), section B on the formation of an UNLLO (draft recommendations 7 to 10), and section C on the organization of an UNLLO (draft recommendations 11 to 13). The Working Group also heard a short presentation of working paper A/CN.9/WG.I/WP.94 of the French legislative approach known as an "Entrepreneur with Limited Liability" (or EIRL), which represented a possible alternative legislative model applicable to micro and small businesses.

11. At its twenty-eighth session (New York, 1 to 9 May 2017), the Working Group considered both topics currently on its agenda. Those deliberations commenced with a review of the entire draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.101), save for the introductory section and draft recommendation 9 (Core functions of a business registry) and its attendant commentary, to which the Working Group agreed to revert at a future session. With respect to its deliberations regarding the creation of a simplified business entity (A/CN.9/WG.I/WP.99 and Add.1), the Working Group continued the work begun at its twenty-seventh session, and considered the recommendations (and related commentary) of the draft legislative guide on an UNLLO in sections D, E and F.

12. At its fiftieth session (Vienna, 3 to 21 July 2017), the Commission commended the Working Group for the progress it had made in its two areas of work on the preparation of a draft legislative guide on an UNCITRAL limited liability organization and a draft legislative guide on key principles of a business registry. In particular, the Commission welcomed the potential completion of the latter guide on business registration for possible adoption at the fifty-first session of the Commission (New York, 25 June to 13 July 2018).[18]

13. At its twenty-ninth session (Vienna, 16 to 20 October 2017), the Working Group continued its deliberations. As decided at its twenty-eighth session,[19] the Working Group spent the entire twenty-ninth session reviewing a draft legislative guide on key principles of a business registry (A/CN.9/WG.I/WP.106) save for the introductory section and part of the annex (paras. 1 to 6 and 8 to 16 and recommendations 1 and 3/annex) to which the Working Group agreed to revert at a future session.

14. At its thirtieth session (New York, 12 to 16 March 2018), Working Group I conducted a third review of the draft legislative guide on key principles of a business

[16] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 224.

[17] See supra footnote 15.

[18] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 235.

[19] See Report of Working Group I (MSMEs) on the work of its twenty-eighth session, A/CN.9/900, para. 169.

registry on the basis of working paper A/CN.9/WG.I/WP.109, including the introductory paragraphs. The Working Group also reviewed the overarching document setting out the context for its work on MSMEs included in A/CN.9/WG.I/WP.110. After discussion, the Working Group agreed to transmit both texts to the Commission for consideration and potential adoption at its fifty-first session. The Working Group also decided[20] that it would devote the deliberations at its thirty-first session (Vienna, 8 to 12 October 2018) to consideration of the draft legislative guide on an UNLLO found in documents A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1.

15. At its fifty-first session, in 2018, the Commission commended the Working Group on the work it had done on the preparation of a draft legislative guide on key principles of a business registry as it appeared in document A/CN.9/940 and adopted the guide with a few revisions.[21] The Commission also heard a progress report of the work of Working Group I and noted that at its thirty-first session the Working Group would resume its consideration of the draft legislative guide on an UNLLO, with a view to completing the first reading of the draft text.

II. Organization of the session

16. Working Group I, which was composed of all States Members of the Commission, held its thirty-first session in Vienna from 8 to 12 October 2018. The session was attended by representatives of the following States Members of the Working Group: Argentina, Armenia, Belarus, Brazil, Burundi, Canada, Chile, China, Côte d'Ivoire, Czechia, Ecuador, El Salvador, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kenya, Malaysia, Mexico, Nigeria, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Switzerland, Thailand, United States of America and Venezuela (Bolivarian Republic of).

17. The session was attended by observers from the following States: Benin, Bolivia (Plurinational State of), Burkina Faso, Costa Rica, Croatia, Dominican Republic, Finland, Lao People's Democratic Republic, Latvia, Malta, Myanmar, Nepal, Netherlands, Qatar and Slovakia.

18. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: World Bank Group (WB);

(b) *Intergovernmental organizations*: Commonwealth Secretariat, Cooperation Council for the Arab States of the Gulf (GCC); Eurasian Economic Commission/Eurasian Economic Union (EEC/EEU);

(c) *Invited international non-governmental organizations*: American Bar Association (ABA); Bankers Association for Finance and Trade (BAFT); Center for International Legal Studies (CILS); Conseils des Notariats de l'Union Européenne (CNUE); International Union of Notaries (UINL); Latin American Group of Lawyers for International Trade Law (GRULACI); Law Association for Asia and the Pacific (LAWASIA); Moot Alumni Association (MAA); and National Law Center for Inter-American Free Trade (NLCIFT).

[20] See Report of Working Group I (MSMEs) on the work of its thirtieth session, A/CN.9/933, para. 114.

[21] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), paras. 71 to 111.

19. The Working Group elected the following officers:

Chair: Ms. Maria Chiara Malaguti (Italy)

Rapporteur: Ms. Saboré Kourouma Guiro (Côte d'Ivoire)

20. In addition to documents presented at its previous sessions, the Working Group had before it the following documents:

(a) Annotated provisional agenda (A/CN.9/WG.I/WP.111);

(b) Note by the Secretariat on a draft legislative guide on an UNCITRAL Limited Liability Organization (A/CN.9/WG.I/WP.112).

21. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Preparation of legal standards in respect of micro, small and medium-sized enterprises.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

22. The Working Group engaged in discussions in respect of the preparation of legal standards aimed at the creation of an enabling legal environment for MSMEs, in particular, on a draft legislative guide on an UNCITRAL Limited Liability Organization (UNLLO) (A/CN.9/WG.I/WP.112). The deliberations and decisions of the Working Group on these topics are reflected below.

IV. Preparation of legal standards in respect of micro, small and medium-sized enterprises: draft legislative guide on an UNCITRAL Limited Liability Organization (UNLLO)

A. Presentation of A/CN.9/WG.I/WP.112 and introductory observations

23. The Working Group heard a short introduction on the session and working paper A/CN.9/WG.I/WP.112 that consolidated previous working papers A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1. The Working Group was reminded that it had devoted its twenty-ninth and thirtieth sessions to finalizing the draft legislative guide on Key Principles of a Business Registry, adopted by the Commission at its fifty-first session in July 2018, and that to date the Working Group had not completed a review of the entire draft legislative guide on an UNLLO. It was noted that the Working Group had discussed sections A to F of the draft legislative guide (draft recommendations 1 to 20), save for recommendations 1 and 10, which the Working Group had agreed to revert to at a later stage.

24. The Working Group was further reminded that working paper A/CN.9/WG.I/WP.112 took a "think small first" approach, focusing on the needs of MSMEs and that the recommendations and the attendant commentary were drafted from the perspective of micro and small businesses. It was also stressed that the principle of freedom of contract permeated the entire draft legislative guide although the text included mandatory provisions that could not be contracted out of by the UNLLO members and default rules that were intended to fill any gaps in the agreement of the UNLLO members. It was further emphasized that the draft

legislative guide aimed to create a free-standing legal regime and that while the guide was based on the experience and best practices of States, including several States in the Working Group, in developing simplified business entities, it established an independent legislative approach delinked from States' existing corporate laws. Finally, the Working Group was reminded of some of the main features of an UNLLO, such as:

(a) An UNLLO should be granted legal personality and its members should enjoy limited liability for the obligations of the UNLLO;

(b) No minimum capital requirement should be required for the establishment of an UNLLO; and

(c) An UNLLO could engage in any lawful business or commercial activity.

B. Formation of the UNLLO

25. The Working Group considered whether it should continue its work of the twenty-eighth session and review those sections of the draft legislative guide that had not been previously considered (sections G to L) or whether it would be preferable to review the entire guide beginning with section A given that it was reverting to consideration of the text on the UNLLO after a long interval. After discussion, the Working Group agreed to commence its deliberations from section B on formation of the UNLLO (draft recommendations 7 to 9 and their attendant commentary).

Paragraphs 53 to 55 and recommendation 7

26. It was noted that some States may have strong concerns with legal persons being members of an UNLLO since the structure of the UNLLO was devised to cater for the needs of small entrepreneurs operating individual businesses and legal persons could misuse the UNLLO. For this reason, it was suggested that draft recommendation 7 should include reference to the fact that a State could prevent a legal person from being a member of an UNLLO as indicated in paragraph 55 of the draft legislative guide. It was also observed, however, that permitting a legal person to become a member of an UNLLO would allow for further development of the UNLLO and a suggestion was made to elaborate on safeguards that a State could implement.

27. After discussion, the Working Group agreed that draft recommendation 7 should better address potential concerns raised by granting UNLLO membership to a legal person. In this respect, there was also agreement that the second part of the recommendation be drafted along the following lines: "States should decide whether only natural or also legal persons are permitted to be members of an UNLLO". It was further agreed that the recommendation be divided into two, so that the issue of the number of members an UNLLO should have at its formation and that of the type of membership of an UNLLO be addressed separately.

28. It was agreed that paragraph 55 of the draft legislative guide be further expanded to discuss the advantages and drawbacks of UNLLO membership being granted to a legal person. In this specific context, it was further observed that the commentary should address the following instances: (a) membership of an UNLLO granted to a legal person; (b) membership of an UNLLO not granted to a legal person; and (c) membership of the UNLLO granted to a legal person only in the case of a multi-member UNLLO. There was general agreement on that proposal.

29. A proposal that a new recommendation on whether a legal person could be the sole member of an UNLLO was made, but it was noted that the new drafting of paragraph 55 may address that concern and that the Working Group might revert to that issue at a later stage. It was also noted that a proposal to strike the final sentence of paragraph 53 would need to be raised after the Working Group had considered section G and draft recommendation 21 on transfer of rights, and a proposal to remove

the phrase "until its dissolution" in draft recommendation 7 should likewise be considered at a later stage.

30. As a matter of drafting, it was agreed to eliminate "capable of making an investment" from the text of paragraph 54 and modify the final clause along the lines of "which should include any entity with a legal personality."

Paragraphs 56 to 58 and recommendation 8

31. It was noted that draft recommendation 8 was not intended to address the legal personality of the UNLLO, but rather to address the moment at which the UNLLO came into existence. It was also noted that in some legal systems, a period of time may exist between filing an application for registration and the time at which the certificate of registration of the business was issued. Therefore, it was suggested to clarify whether the draft legislative guide was referring to the registration or the filing. After discussion, the Working Group agreed that the draft recommendation, rather than addressing the matter of registration procedures, should be drafted along the lines of "The law should provide that the UNLLO is formed when it is registered" and that the commentary should be modified accordingly.

32. It was agreed that the discussion of registration as a matter of State law should be drafted neutrally and should include references to the Legislative Guide on Key Principles of a Business Registry, when appropriate. The Working Group also agreed to insert the word "its" before "legal personality" in paragraph 56.

Paragraphs 59 to 63 and recommendation 9

33. The Working Group agreed to remove reference to "in most instances" from paragraph 60 and the word "valid" from draft recommendation 9. It was also agreed to specify the name of each "member-manager" rather than each "member" in paragraph 61, as there could be instances in which the UNLLO would be member-managed but not all members would be designated managers.

34. With regard to paragraph 63, it was felt that each manager should not have the right to make any amendment to a formation document without the agreement of other managers, and that the paragraph should clarify that each manager should merely have the authority to report or notify the registry of that change. It was also noted that the formation document, as defined in paragraph 27, could not be amended.

35. It was felt that the requirement for the name of each manager in draft recommendation 9(d) could be elaborated to enable more precise identification of the manager. Suggestions were made to require additional pieces of information on the manager, such as an identification card number. It was recalled that draft recommendation 9 had been deliberated at previous Working Group sessions and that suggestions had been considered about including additional mandatory information, such as the business purpose, the capital of the UNLLO and the names of the founding members, but that the Working Group had decided on the four items listed in the recommendation as drafted.

36. While recognizing that the intention of the recommendation was to limit the minimum information necessary for the establishment and operation of the UNLLO, and that additional requirements could create an unnecessary burden for MSMEs, views were expressed that that purpose would need to be balanced against other State policies, such as transparency and accountability. In particular, a concern was raised about the word "only" in the chapeau of draft recommendation 9, which could limit the right of States to solicit additional information from the UNLLO. Views were expressed that the word "only" should be retained in light of the policy goals of the recommendation, that it should be stricken to leave States with the option of including additional information if desired, or that it should be replaced by "at least" or "including". It was also suggested to redraft the text of draft recommendation 9 so that it explicitly referenced the policy goal of keeping required information to a minimum.

37. After discussion, it was agreed to redraft the chapeau of the recommendation along the following lines: "The law should keep information required for the formation of the UNLLO at a minimum. The information required shall include:". Finally, it was noted that the reference to "minimum information" in paragraphs 59 and 60 would need to be consistent with the text of the draft recommendation.

38. A question was raised about the need for draft recommendation 9 and its attendant commentary given the recent adoption of the UNCITRAL Legislative Guide on Key Principles of a Business Registry ("Business Registry Guide") and the requirement of the UNLLO members to register the UNLLO. It was generally felt that the alignment of the language in the two guides would be valuable because they could be consulted independently. The need for consistency between this draft legislative guide and the Business Registry Guide was stressed, and a proposal was made to rephrase draft recommendation 9(b) to reflect the drafting approach adopted in recommendation 21 of the Business Registry Guide, so that it would read: "the address at which the UNLLO can be deemed to receive correspondence or, in cases where the UNLLO does not have a standard form address, the precise description of the geographical location of the UNLLO". At the same time, it was felt that the audience for the two guides would differ and some flexibility would be needed in the use of terminology. It was also suggested that draft recommendation 9(d) could be articulated differently to better address the fact that States could have different identification systems for legal and natural persons, and a proposal to replace "name" with "identity" was agreed by the Working Group.

39. It was noted that the information required under draft recommendation 9(c) related to the type of management of the UNLLO and it was questioned whether this information was relevant in a recommendation listing requirements for the formation document. It was pointed out that the type of management of an UNLLO may evolve over time and that the mention of such information in the formation document may not reflect the reality after a certain time.

40. It was further suggested to amend draft recommendation 9(c) to have it refer to the percentage of ownership or to the person being the legal representative of the UNLLO. While it was generally felt that many of the proposals of additional requirements could assist in protecting third parties, it was recalled that the purpose of the current work was to address the need for a legal framework to help micro businesses operate in the formal sector and that requirements for formation should be kept to a minimum. In response to a question raised as to the information that should be made public, it was also suggested that the commentary to draft recommendation 9 be amended to address the issue of publication of information. The Working Group agreed that the question of what to require should be considered separately from the question of what information should be made public.

41. Recalling the agreement to modify the chapeau, the Working Group agreed that additional requirements could be added by the enacting States depending on their specific needs and that the commentary could be supplemented by examples of those requirements. After discussion, it was therefore agreed that draft recommendation 9(c) would be deleted, and that the word "name" in draft recommendation 9(d) would be replaced by "identity". The Working Group also reverted to its previous discussion on paragraph 63 (see para. 34 above) and decided to delete the paragraph from the commentary. In addition, it was agreed to insert into the commentary a discussion of minimum information that States may wish to require, such as the percentage of ownership (see, however, the discussion of the Working Group on "percentage of the ownership" in paras. 77 and 78 below), a list of founding members, duty of representation and limitations on the powers of managers to bind the UNLLO. Some delegations also suggested to add reference to "a purpose clause".

C. Organization of the UNLLO

Paragraphs 67 to 70 and recommendation 11

42. It was noted that draft recommendation 11 (as modified by the Working Group at its twenty-eighth session) only provided a default rule on managing an UNLLO with respect only to single-member UNLLOs and a suggestion was made that a default rule for a multi-member UNLLO would also be valuable. In this regard, there was support for a proposal that the second sentence of the recommendation should be redrafted along the lines of former draft recommendation 12 in document A/CN.9/WG.I/WP.99/Add.1 without using the expression "member-managed". It was also agreed that the revised recommendation 11 should account for a situation in which UNLLO members opted for designating an external manager instead of managing the business themselves.

43. It was further suggested that the phrase "unless otherwise agreed" used both in current recommendation 11 and former recommendation 12 (as drafted in A/CN.9/WG.I/WP.99/Add.1) be replaced with text along the lines of "unless otherwise indicated in the members' agreement" since "members' agreement" was a defined term in the draft legislative guide. With regard to the term "members' agreement", several delegations noted that the meaning would need to be further clarified as used throughout the draft legislative guide, as well as in the definition provided in the terminology section. There was agreement in the Working Group to revert to this discussion when considering the terminology section. Secondly, a concern was expressed that reference to appointing an external manager in the members' agreement was not consistent with the procedure proposed in draft recommendation 15 that provided that a manager's election and removal could be made by a majority decision of the UNLLO members. It was however clarified that draft recommendation 11 was meant to express the broad concept that an UNLLO might be managed by an external manager or by some, but not all, of the members, while draft recommendation 15 provided a rule for the appointment and removal of a manager during the life cycle of an UNLLO and specified the required members' votes. It was suggested to include a cross reference to draft recommendation 15 in the commentary to draft recommendation 11.

44. After discussion, the Working Group agreed to include in the draft recommendation text along the following lines: "The law should provide that the UNLLO is managed by all members unless otherwise indicated in the members' agreement. Members of the UNLLO may agree in their members' agreement to appoint one or more non-member managers".

45. In that regard, it was noted that the phrase "members' agreement" as generally agreed upon in draft recommendation 11 should contain brackets, as the Working Group had not reached consensus on the use of "members' agreement" or "formation document". If "members' agreement" was to be used, the Working Group would need to consider whether such an agreement would need to be recorded. The Working Group agreed it would review the definition of "members' agreement" more generally.

46. A proposal to move draft recommendation 11 to section D of the guide (Management by managers or members) and to replace it with a more general rule in Section C (Organization of the UNLLO) on the need for an UNLLO to have at least one manager was also heard by the Working Group.

47. Finally, a question was raised whether legal persons that were members of an UNLLO could also be a manager of the UNLLO. It was agreed that this decision would need to be addressed by domestic legislation, as well as any other legal requirements (such as age or legal capacity) to be met in order to be a manager. The Working Group supported the approach of addressing this issue in the commentary to draft recommendation 11 and to possibly discuss the issue again at a future session.

Paragraphs 71 to 73 and recommendation 12

48. The Working Group began its deliberations on draft recommendation 12 by considering a number of issues that would affect the deliberations of other draft recommendations. While it was noted that draft recommendation 12 addressed two different types of management, the first by members and the second by managers, it was suggested that it should rather focus on the decision-making process for decisions that needed to be made by members in their capacity as members. A question was raised as to how voting rights should be apportioned among members of the UNLLO.

49. It was first observed that the language of draft recommendation 12(b) would not apply to manager-managed UNLLOs as a non-member manager would make day-to-day decisions without the involvement of the members. It was suggested that draft recommendation 12 should focus exclusively on member-managed businesses, the definition of which should specify that it only referred to UNLLOs in which all members were managers. It was thought that such an UNLLO would benefit from default rules on decision-making processes. A further suggestion was that information on manager-managed UNLLOs could be dealt with separately, possibly in another section of the guide.

50. Secondly, it was noted that different types of management decisions would require varying voting structures, for example some decisions would only require a simple majority, while others might require a qualified majority. It was then pointed out that the differentiation between two types of decisions (the decision taken in the ordinary course of business and the decisions taken outside the ordinary course of business) may add ambiguity to the text, which would need to be explained in greater detail. It was also noted that the Working Group would need to define qualified majority.

51. Similarly, it was noted that the draft guide would need to address how to define a majority more generally. Suggestions to distribute voting rights in proportion to the percentage of ownership received some support. Others were of the view that voting rights based upon proportional share of ownership may not be practical and that there would be multiple ways to define ownership. Consequently, a suggestion for the default rule to grant equal voting rights to all members also received some support.

52. After discussion, it was felt that the decision reached by the Working Group on draft recommendation 12 would affect the deliberation on other recommendations in the draft guide, and the Secretariat was requested to provide a redrafted recommendation 12 for further discussion by the Working Group.

53. The Working Group continued its discussion of draft recommendation 12 and heard a number of proposals (see the annex to the report) from delegations in addition to that of the Secretariat on how to modify that recommendation.

54. Many views were expressed in relation to the complexity of the recommendation for the end users of the draft legislative guide. The main concern raised was that the use of specific terminology referring to corporate law concepts could be confusing for potential members of an UNLLO. In response, it was said that precise definitions of several concepts could be added to the draft legislative guide.

55. In that context, it was recalled that the general approach of the Working Group had been for simplicity and the promotion of freedom of contract and that providing complex rules would not serve that purpose. On the other hand, the concern was expressed that the draft legislative guide should not be so simple as to lose legal certainty.

56. To address the concerns, it was suggested that the draft guide provided only guidance on a legal framework for a simple and flexible model of an UNLLO as a completely new business form catering to the needs of SMEs. It was noted however that an UNLLO which started as a very small and basic entity could evolve into a more elaborate structure. As it was felt that some greater level of complexity would

be needed in the guide to assist such businesses, it was suggested that guidance should relate not only to the legal framework for its initial form, but also to the steps for its members to follow when they would want to grow or evolve.

57. While some views expressed were that this transition of the UNLLO needed to be dealt with in the guide, other views were that the UNLLO would have the opportunity to take on another recognized legal business form under applicable domestic law.

58. It was nevertheless pointed out that many members may prefer to retain the UNLLO form so as not to have to comply with more burdensome or expensive requirements under different corporate structures. In response, it was said that the draft guide could perhaps provide for model forms that catered to the different options available to the UNLLO at its initial stage or when the members would want to modify that structure. It was recalled that similar suggestions had been made at previous sessions of the Working Group.

59. While acknowledging the need for guidance on a simple form and for assistance through its possible evolution, it was observed that the overall framework would need to be sound and it was suggested to address the concerns using simple default rules.

60. Returning to the proposals before the Working Group (see the annex to the report), the concept of voting rights was raised in a variety of contexts, including the question of whether the default rules should be determined by headcount or in proportion to ownership. A view was expressed that the term "voting" itself could cause confusion, as in practice voting would not be likely to occur, and another term such as "decision-making" was suggested to be included in its place. Alternatively, a suggestion was made to include a separate recommendation on voting rights to provide greater guidance given the concerns raised. However, there was a prevailing view that the proposals considered by the Working Group had presented a similar approach to the topic of voting.

61. There was consensus that certain categories of decision-making should be through a simple majority vote. There was also wide support for the suggestion to expressly identify in the text of the draft recommendation the types of issues that would require a qualified majority or unanimity. On the question of whether the default rule should specify either qualified majority or unanimity, views were expressed as to the positive and negative effects of each, including the possibility of abuse of majority power and abuse of veto power. It was also stated that if qualified majority were used in the default rules, then the Working Group should consider specifically how to address amendments to the members' agreement.

62. It was noted that much of the content in the proposals considered by the Working Group (see annex to the report) aligned in substantive ways, but that a primary difference was in respect to the authority of managers when not all members were managing the UNLLO.

63. One approach taken was to prioritize the rights of the members of the UNLLO and to limit the responsibility of the managers to matters that were not assigned for decision by members by law or by the members' agreement. An example of a law was given that a State might, for example, have rules of accounting that would need the approval of all members. That approach treated non-member managers and member managers similarly while keeping separate the voting rights of the UNLLO members. It was said that under this approach caution should be given to possible gaps or overlaps between the decisions within the authority of the UNLLO members and those within the authority of the manager.

64. Under the second approach, the control rights of the members were provided but the responsibility and the authority of the managers over the day-to-day operations of the UNLLO were emphasized. In this regard, a concern was raised about the ability of a manager to act outside his or her responsibilities, and it was suggested to clarify that this section needed to focus on internal decision-making authority and not on external representation.

65. After discussion, the Working Group agreed that further consideration of draft recommendation 12 would be necessary.

66. An additional drafting proposal (see proposal H in the annex to the report) was presented in an effort to combine both approaches considered by the Working Group and to address the concerns raised during the deliberations. Regarding this new proposal, it was said that the language would need to be adjusted in several instances. It was stressed as an example that the expression "assigned by law" may not be clear.

67. Some concern was again expressed as to the terminology referring to corporate law and it was suggested to refer to "approval" or "consent" instead of "vote". It was also noted that the proposal used the expressions "decisions made by members" and "differences resolved by managers" and that consistency should be used. Finally, it was said that confusion could arise from the expression "decision reserved for members".

68. Although this new proposal was not taken up as drafted, it was generally felt that there was consensus in the Working Group that draft recommendation 12 should contain a default rule providing for simple majority and that qualified majority would be required for the identified restricted number of decisions. The instances in which unanimity would be preferable could still be considered at a later stage. It was added that qualified majority would also need to be defined and therefore the terms "qualified majority" and "members' agreement" in the next version of draft recommendation 12 should be placed in square brackets. It was agreed that all issues regarding drafting and identified inconsistencies or ambiguities should be resolved by the Secretariat, which would also have to propose a clear definition for the word "manager" for the draft guide.

69. An observation regarding the way to proceed for the next round of deliberation was that it would be necessary to know which of those proposals would be the basis for discussion. In response, it was said that since no consensus had been reached on one or the other, all proposals would be put in the record for easier reference at a later stage (see the annex to the report). The Working Group agreed to reconsider the additional drafting proposal (see para. 66 above) at its next session. Although the Working Group had not reviewed draft recommendation 14 in document A/CN.9/WG.I/WP.112, it requested the Secretariat to prepare an alternative drafting of that recommendation based on the proposals that had been made (see paras. 63 to 66 above) which also included modifications to draft recommendation 14.

D. Management by managers or members

Paragraphs 82 and 83 and recommendation 15

70. The Working Group discussed draft recommendation 15 and its attendant commentary.

71. It was said that the draft recommendation should apply only to a manager-managed UNLLO and that it should be clarified that the recommendation did not apply to a member-managed UNLLO when all members were managers. Some delegations expressed a preference for the current drafting of the recommendation as it was noted that the UNLLO members could be appointed as managers when not all members were managers. It was further noted that the draft recommendation would be applicable in those situations in which the default rule in draft recommendation 11 did not apply. In that regard, a question was raised whether removal of a manager who was also an UNLLO member would affect its contractual rights in the UNLLO. Some delegations were of the view that removal of a member-manager (when all members were managers) would require a decision by a qualified majority of the members, as would modification of the members' agreement, since such a decision would affect the structure of the UNLLO. It was also noted that the issue was not discussed in the draft guide and the matter of expulsion of a member could be considered in the context

of draft recommendation 12. Another view was expressed that simple majority was sufficient to remove a manager who was also a member.

72. A comment was reiterated that the rules in draft recommendations 11 and 15 should not be placed in different sections, but rather combined in the same section dealing with (a) election or removal of a member who is a manager when not all members were managers; and (b) election or removal of an external manager. It was suggested that since certain recommendations only applied when an UNLLO was managed by all of its members, it would be appropriate for the legislative guide to be structured around a multi-track approach moving from an UNLLO managed only by all of its members to more complex forms. Different opinions were expressed in this regard. One possible approach would be to separate the two "branches of the tree" and have the recommendations for the UNLLO managed only by all of its members in one section of the draft legislative guide and the recommendations on the more elaborate UNLLO in a different section. In that option, it would be necessary to provide an introductory text to the draft guide which would clarify what rules applied solely to the UNLLO managed only by all of its members. One view was expressed that this approach might result in duplication of recommendations.

73. Another view was to examine each recommendation by keeping in mind, for each recommendation, whether it was applicable to UNLLOs managed only by all members, or to UNLLOs managed by an appointed manager or both. It was thought that that approach would result in a global overview of the draft guide before making a determination about how to proceed.

74. After discussion, it was agreed that further consideration of the scope of the recommendation and its application was needed at future sessions of the Working Group.

75. As a matter of drafting the following observations were noted:

(a) In paragraph 82, the term "agreement" could be replaced with "rules";

(b) In paragraph 83, the term "would" between "members" and "be required" could be replaced with "could"; and

(c) The text of draft recommendation 15 should read "appointed or removed".

E. Percentage of the ownership of the UNLLO and contribution by members

Paragraphs 84 to 90 and recommendations 16 and 17

76. It was noted that recommendation 16 as currently drafted provided a default rule on equal share of ownership of the UNLLO among members. It was agreed to retain the default rule in principle, but to clarify the text of the recommendation. In that regard, it was felt that draft recommendation 16(a) was not reflected in the commentary and did not provide meaningful guidance to enacting States. Therefore, there was support in the Working Group to eliminate the subparagraph.

77. It was stated that the term "ownership" in the draft recommendation had economic implications. A concern was raised that it might be understood to apply only to the assets of the UNLLO, when the right to participate was the impetus behind the recommendation. In that context, several alternative suggestions were made, including membership, stake, share, value, and interest. It was recalled that the Working Group had previously considered the use of such terms (para. 25, A/CN.9/866). A view was expressed that the term "share" would give the impression of requiring a corporate-like structure. Nonetheless, it was agreed that "share," when used in the singular as a noun, should be introduced into the draft legislative guide as a substitute for ownership and that the term should be defined and used neutrally.

78. After discussion, it was agreed to modify the text of draft recommendation 16 along the following lines: "Members have an equal share in the UNLLO unless they

agree otherwise in the members' agreement." Given the scope of the proposed draft recommendation, it was felt that the discussion of classes of shares in paragraph 85 would be unnecessarily complicated for the commentary and the Working Group agreed to delete it.

79. With regards to capital structure, it was stated that the more accurate term in paragraph 87 would be "legal capital". It was questioned again whether members should be required to make a contribution and it was recalled that contributions could be made in cash or kind or performance of a service. Examples were given of MSMEs where at least one member would not make a contribution at the outset, and a suggestion to insert into paragraph 86 a reference that it was not necessary for some members to make contributions was taken up by the Working Group. Moreover, given the decision that the UNLLO should not be required to have legal capital upon registration, contributions by members would not be necessary. Consequently, the Working Group agreed to delete the rest of paragraph 87.

80. Further, regarding contributions, it was stated that the word "amount" in paragraph 88 ought to be "valuation", so as to not give the impression that contributions must be in cash. The Working Group agreed to move paragraph 89 immediately after paragraph 86 to better illustrate non-monetary contributions. It was also observed that there would be some difficulty for members to value contributions not made in cash and a suggestion was made to have a practical rule on non-monetary valuations in the draft legislative guide. A concern about implied continuing obligations was also noted, particularly vis-à-vis third parties.

81. A question regarding valuation of contributions in relation to shares was raised. While it was noted that the Working Group had chosen the principle of equality as a default for a member's share in draft recommendation 16, views were expressed that draft recommendation 17 should include a sentence that a member's share in the UNLLO should correspond to its percentage of contribution to the UNLLO and text was suggested along the following lines: "If members identify the respective values of their contributions in the members' agreement, each member's share in the UNLLO will be determined in accordance with those respective values."

82. Others were of the view that contributions need not be linked to shares and it would not be necessary to treat the two with equivalence. Views were also expressed that draft recommendation 16 should remain the default rule and that a caveat in draft recommendation 17 could be complicated for States to implement. In response, it was suggested that draft recommendation 17 may no longer be necessary, but it was stated that the financial liability discussed in paragraph 42 was usually limited to the value of the member's contribution to the UNLLO, so a recommendation on contributions would remain a valuable part of the draft legislative guide.

83. In respect to the link between contributions and shares, it was agreed that the second clause of draft recommendation 17, which read "when deciding the members' respective percentage of ownership of the UNLLO", should be eliminated. There was also some support to delete the final sentence of draft recommendation 17 or to change "should be equivalent" to something like "should be deemed equivalent."

84. After discussion, the Working Group agreed that further consideration of draft recommendation 17 would be necessary.

85. The Working Group thus considered new proposals on draft recommendations 16 and 17 that were based on the prior deliberations. It was stated that a share based on a member's contribution would better reflect the expectations of the members of the UNLLO. In that respect, it was noted that agreement between the members as to the value of their contributions would be necessary. Based upon that, there was a prevailing view that when the value of the contribution was agreed, the default rule should establish the share based upon the contribution.

86. A view was expressed that contributions or a decision on the value of the contributions to be made would need to be formalized prior to registration. It was noted that this would preclude service as a form of contribution and that timing could

be added to the description of items that members could agree upon. A concern relating to the form of the members' agreement and how it could be amended was again noted.

87. When contributions were not made, or when the value of the contributions was not established, the Working Group agreed that another default rule would be necessary and agreed to apply the principle of equality that had formed the basis of draft recommendation 16.

88. It was noted that there were two default rules relating to a member's share, and it was agreed to combine them into one draft recommendation, along the following lines: "The law should provide that the members of the UNLLO are permitted to agree upon contributions, if any, made to the UNLLO, including the amount, type, timing and value of such contributions. In the absence of such agreement, contributions that are made to the UNLLO should be deemed equal for all members. Unless otherwise agreed in the members' agreement, members' share in the UNLLO shall be decided in accordance with the agreed value of their contributions. In the absence of any reference to contributions, members shall have an equal share in the UNLLO unless they agreed otherwise in the members' agreement".

89. Views were expressed that that recommendation did not take into account and did not apply to single member UNLLOs. After some discussion, it was agreed that provisions would be made where necessary in the draft guide to account for single member UNLLOs. A view was also expressed that the term "agreed value" would not include the default rule set out in the combined version of draft recommendations 16 and 17 (see para. 88 above), that in the absence of an agreement among the members, contributions made to the UNLLO should be deemed equal for all members, and that in the drafting process, the term "agreed value" should be reconsidered.

V. Next session of the Working Group

90. The Working Group recalled that its thirty-second session was scheduled to be held from 25 to 29 March 2019 in New York. The Working Group considered how to approach the session, given that part of it would be dedicated to a colloquium on contractual networks and other legal tools that achieved goals similar to contractual networks. It was agreed that the next session would consider the core concepts underlying the draft legislative guide, especially the terminology section. The Secretariat was requested to make amendments to the recommendations and the commentary that the Working Group had discussed at its current session and to thoroughly footnote the revised text to reflect discussions and decisions of the current session, in order to assist the Working Group in its consideration of the draft legislative guide. The Secretariat was given the flexibility to suggest changes to recommendations that would likely be affected by decisions taken by the Working Group at its current session. The Secretariat was also requested to identify portions of the draft guide where a discussion on either a single-member UNLLO or more sophisticated forms of an UNLLO could be advisable.

Annex

Proposals discussed by the Working Group on possible redrafting of recommendations 12 and 14

PROPOSAL A	PROPOSAL B
Recommendation 12	**Recommendation 12**
The law should provide that, unless otherwise indicated in the members' agreement: (a) The members of an UNLLO shall have voting rights in proportion to their respective percentage of ownership of the UNLLO; (b) A [simple] majority of votes, in proportion to the respective percentage of ownership of the UNLLO, shall be required for decisions on the operation of an UNLLO; and (c) A qualified majority of votes, in proportion to the respective percentage of ownership of the UNLLO, shall be required for decisions that affect the ownership or form of the UNLLO.	The law should provide that, unless otherwise indicated in the members' agreement: (a) The members of an UNLLO shall have equal voting rights or in proportion to their respective percentage of ownership of the UNLLO; (b) A qualified majority of votes, in proportion to the respective percentage of ownership of the UNLLO, shall be required for the following decisions: (i) Amendment of the members' agreement of the UNLLO; (ii) Mergers, restructuring, or conversion of the UNLLO; or (iii) Dissolution or winding-up of the UNLLO; or (c) Any other matters shall be decided by a majority of votes in proportion to the respective percentage of ownership of the UNLLO.
PROPOSAL C	**PROPOSAL D**
Recommendation 12	**Recommendation 12**
The law should provide that, unless otherwise provided in the members' agreement and except as provided below, decisions with respect to an UNLLO shall be made by a majority of the members or, if the UNLLO has managers, by a majority of the managers. The law should also provide that the consent of all members is necessary to: (a) Authorize an act of the UNLLO that is not in the UNLLO's ordinary course of business; (b) Amend the members' agreement of the UNLLO; or (c) Merge, restructure, or convert the UNLLO; or (d) Dissolve or wind up the UNLLO.	The law should provide that, unless otherwise provided in the members' agreement and except as provided below, decisions with respect to an UNLLO shall be made by a majority of the members [by their voting rights] or, if the UNLLO has managers, by a majority of the managers. The law should also provide that, unless otherwise provided in the members' agreement, [the consent of all members/a decision by a qualified majority on the members] is necessary to: [(a) Authorize an act of the UNLLO that is not in the UNLLO's ordinary course of business;] (b) Amend the members' agreement of the UNLLO; (c) Merge, restructure, or convert the UNLLO; or (d) Dissolve or wind up the UNLLO.
PROPOSAL E	**PROPOSAL F**
Recommendation 12	**Recommendation 12**
The law should specify that, when the UNLLO is member-managed (i.e., managed by all members), the following rules apply: (a) The following matters shall be decided by [a qualified majority of voting rights]/[a unanimous decision] of the members: (i) Mergers, restructuring, or conversion of the UNLLO; (ii) Dissolution or winding-up of the UNLLO; or (iii) Amendment of the members' agreement of the UNLLO;	The law should provide that: (a) The following matters shall be decided by a majority of voting rights of the members: (i) Any appointment of managers and any dismissal of appointed managers; (ii) Distribution; (b) The following matters shall be decided by a qualified majority of voting rights of the members: (i) Mergers, restructuring, or conversion of the UNLLO; (ii) Dissolution or winding-up of the UNLLO; or

(b) Any other matters shall be decided by a majority [of voting rights] of the members.	(iii) Amendmen. of the members' agreement of the UNLLO? (c) Unless otherwise provided for in the members' agreement, where all members are managers, differences arising between members on any other matter shall be decided by a majority [of voting rights] of the members; (d) Unless otherwise provided for in the members' agreement, where managers have been appointed, differences arising between managers on any other matter shall be decided by a majority of the managers.
Recommendation 12 bis	
The law should specify that, when the UNLLO is manager-managed (i.e., not member-managed), the following rules apply: (a) The following matters shall be decided by a majority of voting rights of the members: (i) Election and dismissal of managers; (ii) Distribution? (b) The following matters shall be decided by a qualified majority of voting rights of the members: (i) Mergers, restructuring, or conversion of the UNLLO; (ii) Dissolution or winding-up of the UNLLO; or (iii) Amendment of the members' agreement of the UNLLO; (c) Unless otherwise stated in the law, any other matters shall be decided by a majority of managers.	
PROPOSAL G	**PROPOSAL H**
Recommendation 12	**Recommendation 12**
The law should provide that, unless otherwise stipulated in the members' agreement: (a) The members of an UNLLO shall have equal voting rights, unless they have a different percentage in the ownership of the UNLLO and stipulated in the members' agreement; (b) A qualified majority shall be required for the following decisions of the members: (i) Amendment of the members' agreement of the UNLLO; (ii) Mergers, restructuring, or conversion of the UNLLO; or (iii) Dissolution or winding-up of the UNLLO; (c) Any other members' decision shall be taken by a majority vote.	The law should provide that, unless otherwise stipulated in the members' agreement: (a) The members of an UNLLO shall have equal voting rights, unless they have a different percentage in the ownership of the UNLLO as stipulated in the members' agreement; (b) A [qualified majority] shall be required for the following decisions of the members: (i) Amendment of the members' agreement of the UNLLO; (ii) Mergers, restructuring, or conversion of the UNLLO; or (iii) Dissolution or winding-up of the UNLLO; (c) Any other decisions reserved for members in the members' agreement or assigned by law shall be taken by majority vote.

Recommendation 14	Recommendation 14
(a) The law should provide that each manager individually has the authority to bind the UNLLO. Restrictions upon this authority will not be effective against third parties dealing with the UNLLO; (b) The managers are responsible for all matters not assigned by law or the members' agreement to the members; (c) Unless otherwise provided for in the members' agreement, where there is more than one manager appointed, differences arising between them shall be decided by a majority vote.	The law should provide that each manager individually has the authority to bind the UNLLO. Restrictions upon this authority will not be effective against third parties dealing with the UNLLO.
	Recommendation 14 bis
	The law should provide that... (a) The managers are responsible for all matters not assigned by law or the members' agreement to the members; (b) Unless otherwise provided for in the members' agreement, differences among managers shall be resolved by majority vote.